



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Christopher R. LaRose, Esq
Armstrong Teasdale LLP
One Metropolitan Square
Suite 2600
St. Louis, Missouri 63102

MAY 14 2009

RE: MUR 6099
Waverley Glen Systems Ltd.

Dear Mr. LaRose:

On October 27, 2008, the Federal Election Commission ("Commission") notified your client, Waverley Glen Systems Ltd., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 7, 2009, the Commission found, on the basis of the information in the complaint and information provided by your client, that there is no reason to believe that Waverley Glen Systems Ltd. violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel

A handwritten signature in cursive script, reading "Susan L. Lebeaux".

BY: Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT: Waverley Glen Systems Ltd.**

MUR 6099

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7 **I. INTRODUCTION**

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9 The complaint in this matter alleges that Missouri State Representative Sam Page and his
10 state political committee, Page for Missouri and Barbara Hoffman, in her official capacity as
11 treasurer ("Committee"), knowingly and willfully accepted a prohibited \$10,000 campaign
12 contribution for his campaign from a foreign corporation, Waverley Glen Systems Ltd.
13 ("Waverley Glen"), a Canadian company wholly-owned by Prism Medical Ltd., another
14 Canadian corporation. As discussed below, the available information indicates that another
15 wholly-owned subsidiary of Prism Medical, Ergosafe Products LLC ("Ergosafe"), a domestic
16 corporation, made the contribution. As the Commission's regulations allow domestic
17 subsidiaries of foreign contributions to make contributions if they meet certain criteria, and it
18 appears that Ergosafe has satisfied those requirements, the Commission has determined to find
19 no reason to believe that Waverley Glen violated 2 U.S.C. § 441e.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Facts**

22 Prism Medical Ltd. ("Prism Group") is a foreign corporation based in Canada that
23 focuses on the manufacture, distribution, sale, and installation of lift, transfer and handling
24 devices. One of its subsidiaries is Waverley Glen, a foreign corporation likewise based in
25 Canada. Ergosafe, while also a wholly-owned subsidiary of the Prism Group, is a domestic
26 corporation unlike Waverley Glen. Specifically, Ergosafe is a Delaware corporation registered

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1 to conduct business in Missouri. Charley Wallace, a U.S. citizen, is the President of both
2 Waverley Glen and Ergosafe, and is the Chief Operating Officer of the Prism Group.

3 Since 2003, Dr. Sam Page has served in the Missouri House of Representatives. While
4 still holding that office, on June 5, 2007, Dr. Page announced his candidacy for the Democratic
5 nomination for the office of Lieutenant Governor of Missouri. Page's state political committee,
6 Page for Missouri, which registers and files reports with the state of Missouri, accepted
7 contributions for this campaign.

8 On August 28, 2008, a Missouri state law came into effect effectively repealing political
9 contribution limits. Tony Messenger, *Big Money gives Jolt to Missouri Governor's Race*, St.
10 Louis Post-Dispatch, September 3, 2008. Thereafter, in its state disclosure reports, the
11 Committee reported receipt of a \$10,000 contribution on October 4, 2008 from "Waverly Glenn
12 [sic]." According to the complaint and accompanying documents, the Committee received this
13 contribution via corporate check dated September 25, 2008. The check was drawn on the bank
14 account of "Waverley Glen, a Prism Medical Company," and is made payable to "Page for
15 Missouri." The photocopied check also contains two signatures from Waverley Glen
16 personnel—neither of whom is Charley Wallace—and was mailed in an envelope containing the
17 Waverley Glen logo and the following address: 87 Sharer Road, Vaughan, Ontario, Canada. On
18 October 17, 2008, the Committee amended its prior disclosure of the contribution in question,
19 replacing the Vaughan Ontario address with a St. Louis, Missouri address, but leaving the
20 contributor as Waverley Glen.

21 The complaint maintains that Waverley Glen, the foreign corporation, made the
22 contribution, noting that Waverley Glen personnel not only signed the check, but also mailed the
23 check from Waverley Glen's address in Canada to the Committee.

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1 In its response, Waverley Glen states that the disputed contribution was made by a
2 domestic company, noting that "'Waverley Glen, A Prism Medical Company' is merely a trade
3 name utilized by all Prism Group companies" and that neither Waverley Glen nor its parent
4 company, Prism Medical Ltd., actually authorized or funded the contribution to the Committee.
5 Waverley Glen Response at 2. Rather, Waverley Glen states that Ergosafe made the contribution
6 at the direction of its President Charley Wallace, and the contribution was drawn from
7 Ergosafe's domestic bank account with HSBC Bank USA. It further states that since Mr.
8 Wallace was not in Ergosafe's Missouri office when he authorized payment of the contribution,
9 he was unable to physically sign the contribution check. *Id.* at 4. Therefore, Mr. Wallace

10 contacted the corporate headquarters of Ergosafe's parent in Canada
11 and directed a check to be issued on Ergosafe's behalf. At the Canadian
12 office, eight individuals have authorization to issue checks from the Prism
13 Group's accounts located in the United States, including Ergosafe's HSBC
14 account. Both signatories in this instance were among those individuals.
15 Ergosafe's parent merely signed and mailed a check for a contribution
16 previously authorized by Ergosafe.
17

18 *Id.* at 4-5. Waverley Glen also attached a letter from HSBC bank dated November 7, 2008,
19 confirming that Ergosafe maintains an account with that bank. See Waverley Glen Response,
20 Exhibit I.

21 B. Analysis

22 The Act defines "contribution" as anything of value made by any person for the purpose
23 of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). It is unlawful for a
24 foreign national, directly or indirectly, to make a contribution or donation of money or other
25 thing of value, or make an expenditure in connection with a federal, state, or local election.
26 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A "foreign national" is an individual who is

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1 not a citizen of the United States or a national of the United States and who is not lawfully
2 admitted for permanent residence. 2 U.S.C. § 441e(b)(2). The term also encompasses "a
3 partnership, association, corporation, organization, or other combination of persons organized
4 under the laws of or having its principal place of business in a foreign country." 2 U.S.C.
5 § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

6 Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals from
7 directing, dictating, controlling, or directly or indirectly participating in the decision-making
8 process of any person, including a corporation, with regard to that person's federal or nonfederal
9 election-related activities, such as decisions relating to making contributions, expenditures or
10 disbursements in connection with elections for any local, state, or federal office or decisions
11 concerning the administration of a political committee. 11 C.F.R. § 110.20(i).

12 In addressing the issue of whether a domestic subsidiary of a foreign national, like
13 Ergosafe, may make contributions in connection with local, state or federal campaigns for
14 political office, the Commission has looked to two factors when giving advice to requestors: the
15 source of the funds used to make the contributions and the nationality status of the decision
16 makers. See Advisory Opinion 2006-15 (TransCanada). Regarding the source of funds used to
17 make contributions in connection with local, state or federal elections, a domestic corporation is
18 not permitted to make such contributions when the source of funds is a foreign national, because
19 this essentially permits the foreign national to make contributions indirectly when it could not do
20 so directly. See Advisory Opinion 1989-20 (Kuilima)(Because Asahi Japan, the foreign parent
21 company, is Kuilima's predominant source of funds, it would essentially be making a
22 contribution to the committee through Kuilima).

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Even if the funds used for political contributions by a domestic company with foreign ownership are generated domestically, the Commission has also considered the nationality status of the decision makers to determine the legality of the contributions. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the subsidiary or its parent, or any other person who is a foreign national, participate in any way in the decision-making process regarding the contributions. 11 C.F.R. § 110.20(i); See Advisory Opinion 1985-3 (Diridon)(No person who is a foreign national under 2 U.S.C. § 441e can have any decision-making role or control with respect to any political contribution made by UTDC, Inc.). Thus, the Act prohibits contributions from foreign nationals, as well as contributions from domestic companies where either the funds originate from a foreign national source or a foreign national is involved in decisions concerning the making of the contribution. 2 U.S.C. § 441e; 11 C.F.R. §§ 110.20(b) and (i).

Waverley Glen has explicitly stated in its response that “Ergosafe’s significant U.S. domestic operations were more than sufficient to fund the small amount at issue here, without any assistance or consideration whatsoever from its Canadian parent companies,” and “[t]he contribution was paid for by funds derived solely from Ergosafe’s revenues generated by sales made to U.S. customers.” Waverley Glen Supplemental Response at 3 (emphasis in the original). Respondent provided an HSBC bank statement showing that Ergosafe had maintained an account balance ranging from \$236,000 to \$568,000 during the month in which the \$10,000 contribution was drawn from its checking account, with nearly \$400,000 in payments from a single U.S. customer, Veterans Medical Equipment Sales, LLC. *Id.* See also Supplemental Response, Exhibits C and D. The bank statement also confirms that the \$10,000 contribution was drawn from the HSBC account, as check no. 1013, which matches the check number on the

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1 photocopied contribution check and is listed among the items paid on the account, with the same
2 \$10,000 amount. *Id.*

3 Waverley Glen also explicitly stated in its supplemental response that “Charley Wallace,
4 a U.S. citizen and President of Ergosafe, was the sole person involved in deciding to make this
5 contribution and thereafter executing the contribution (emphasis in the original).” Waverley
6 Glen Supplemental Response at 2. Further, Waverley Glen provided a supplemental affidavit
7 from Charley Wallace, stating that he had the authority to make the contribution to the
8 Committee without the foreign parent’s approval, and that “[n]o foreign parent company or any
9 foreign company whatsoever directed, dictated, controlled or directly or indirectly participated in
10 the decision-making process regarding the making of the donation at issue.” Supplemental
11 Response, Exhibit D at Paragraph 9.

12 Since Waverley Glen’s supplemental response shows that Ergosafe’s contribution
13 appears to satisfy the criteria for domestic subsidiaries of foreign nationals, a foreign
14 contribution did not occur. Therefore, the Commission has determined to find no reason to
15 believe that Waverley Glen Systems Ltd. violated 2 U.S.C. § 441e by making an impermissible
16 foreign contribution.

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